

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of

Application by Verizon New Jersey)	
Inc., Bell Atlantic Communications,)	
Inc. (d/b/a Verizon Long Distance),)	
NYNEX Long Distance Company)	CC Docket No. 01-347
(d/b/a Verizon Enterprise Solutions),)	
Verizon Global Networks Inc., and)	
Verizon Select Services, Inc., and)	
Authorization to Provide In-Region,)	
InterLATA Services in New Jersey.)	

REPLY COMMENTS OF THE NEW JERSEY CABLE
TELECOMMUNICATIONS ASSOCIATION TO THE
APPLICATION OF VERIZON NEW JERSEY, INC. (VERIZON NJ)
FOR APPROVAL TO PROVIDE IN-REGION LONG DISTANCE SERVICES.

Francis R. Perkins, Esq.
Meyner and Landis LLP
One Gateway Center
Newark, New Jersey 07102
(973) 624-2800

February 1, 2002

The within constitute the reply comments of the New Jersey Cable Telecommunications Association (“NJCTA”) in this matter. A review of the filings of other parties in this proceeding confirms that the application of Verizon NJ is premature. Given that the New Jersey Board of Public Utilities (“NJBPU”) has yet to promulgate a final order approving unbundled network element (“UNE”) rates¹, Verizon NJ cannot show compliance with Checklist Item 2. Since Verizon NJ cannot show compliance with all of the checklist items, its application must be denied.

The effect of UNE rates that are excessive has been to preclude entry into the market for the provision of residential local service by those who can provide such competition.² As related earlier, the NJBPU considered and approved a schedule of UNE rates at its meeting of November 20, 2001 and subsequently issued a “summary order” setting out those rates. Also as noted earlier, the NJBPU anticipates a detailed final order sometime in the future which will set forth the analysis of the record made in the development of those rates.³ That order has not yet been issued.

At its January 9, 2002 agenda meeting at which the NJBPU considered the matter of its consultative report in this matter, the commissioners and staff were quite clear that a favorable consultative report to the Commission was to be conditioned on the NJBPU receiving assurances

¹ While NJCTA’s initial comments, as well as those set out here, have to do with UNE rates, there are other concerns addressed by parties other than NJCTA. The lack of comment by NJCTA regarding other issues, should not be taken as a lack of concern regarding those issues.

² See, for example, comments filed on behalf of AT&T Corp. (“AT&T”) in this proceeding at p. 2 (“Verizon’s non-TELERIC UNE rates were so high so as to preclude on their face any UNE-based residential entry into New Jersey”). See also comments of WorldCom, Inc. at p. I (competition in the local residential market would occur in New Jersey if Verizon reduced its UNE rates to cost-based levels).

³ See, *Comments of the New Jersey Cable Telecommunications Association to the Application of Verizon New Jersey, Inc. (Verizon NJ) for Approval to Provide In-Region Long Distance Services*, (“NJCTA Initial Comments”) filed on January 14, 2002, pp. 4 – 6.

that would those rates not be challenged by Verizon NJ. Commissioner Butler⁴ expressed the strength of his concern as follows:

My second question relates to the UNE rates that we set, and there was some discussion by Director Centrella about whether the UNE case rates are sufficiently in place and that there's any jeopardy that they could be, that the assumption that they are an integral part of this and are an integral part of our expectation that competition will increase, that they may face the challenge, and I guess my question is: Are you assured that in the wording that we have that we will vote on today in the order there is protection for those rates remaining in place of if that those rates do not remain in place, the FCC has notified that those conditions that we voted on are no longer in evidence?

Mr. Centrella⁵, responded "Yes. . . . the language that is in there is clear that if there is a challenge to those rates or somehow are increased in any way, that that would not allow the Board to make a positive recommendation on Checklist Item 2."⁶

As pointed out in our initial comments, however, until a final order is issued, the rates set out are not legally effective, and, further, the grant of a favorable consultative report cannot be conditioned upon Verizon NJ surrendering its right to challenge rates that may be confiscatory.⁷

Significantly, the Evaluation of the United States Department of Justice ("DOJ Evaluation") submitted in this matter, is couched in hedging language. For example, the DOJ Evaluation recites that "*For the most part*, conditions in the New Jersey telecommunications markets appear favorable to fostering competition."⁸ The DOJ Evaluation goes on to recognize that high UNE prices may be reflected in the low levels of CLEC penetration of residential markets in the State; that the NJBPU has not issued a final order analyzing the issues, the

⁴ Honorable Frederick F. Butler, Commissioner, New Jersey Board of Public Utilities.

⁵ Anthony Centrella, Director, Division of Telecommunications, New Jersey Board of Public Utilities

⁶ Transcript, January 9, 2002 NJBPU agenda meeting, pp. 52 – 53.

⁷ NJCTA Initial Comments, pp. 6 – 8.

⁸ DOJ Evaluation, p.2(emphasis added).

positions of the parties, and the reasoning underlying the NJBPU determinations; that Verizon NJ has not addressed the possibility of appeal; that there are unexplained differences between non recurring charges for “hot cuts” in New Jersey and in other jurisdictions; that Verizon NJ has not addressed the possibility of appeal of the UNE rates; and, that the Department of Justice will “rely upon the Commission for its ultimate determination of whether the prices supporting this application are appropriately cost-based.”⁹ Finally the DOJ Evaluation is conditioned similarly to the NJBPU’s consultative report – “Subject to the Commission satisfying itself as to the pricing issues discussed . . . , the Department recommends approval of Verizon’s application for Section 271 authority n New Jersey.”¹⁰ The difficulty for the Commission in this state of affairs is, of course, that it does not have a record upon which it can make a determination of the appropriateness of the pricing.

CONCLUSION

The FCC should deny the application of Verizon NJ to provide in-region long distance service since, if for no other reason, proof of compliance with Checklist Item 2 cannot be made.

Respectfully submitted,

Francis R. Perkins

Francis R. Perkins
MEYNER AND LANDIS LLP
One Gateway Center, Suite 2500
Newark, NJ 07102
(973) 624-2800

Attorneys for New Jersey Cable
Telecommunications Association

⁹ *Id.* pp. 6 - 8.

¹⁰ *Id.* pp. 8 – 9.